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FISCAL IMPACT STATEMENT

LS 6281

BILL NUMBER: SB 62

NOTE PREPARED: Feb 19, 2008

BILL AMENDED: Feb 18, 2008

SUBJECT: Posting Notice of Foreclosure Sale.

FIRST AUTHOR: Sen. Steele

FIRST SPONSOR: Rep. Dembowski

BILL STATUS: As Passed House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: (Amended) *Posting Notice of Foreclosure Sale*- The bill eliminates the requirement that a sheriff post notice of a foreclosure sale in at least three public places in each township where the real estate is located.

Publishing of Notices- The bill requires notice of a foreclosure sale to be published once each week for three successive weeks in: (1) two daily or weekly newspapers of general circulation published in the county; or (2) if only one newspaper is published in the county, then publication in that newspaper. The bill provides that payment for publication will be due no sooner than the day after the advertised date of the sale.

48-Hour Pre-closing Document Availability- The bill requires settlement service providers to make closing documents available to borrowers at least 48 hours before a closing. The bill requires the settlement service provider to provide, at the same time that the required good faith estimates are provided, notice of the borrower's right to receive the documents 48 hours before the closing.

Borrower's Rights- The bill provides that the borrower may waive the right to receive the closing documents by providing a written notice of waiver at or before the closing. The bill provides that if terms of the home loan set forth in the documents provided differ from the terms presented to the borrower at the time of closing, the borrower is entitled to delay or reschedule the closing without penalty and without forfeiting the right to enter into the loan or the purchase contract.

Settlement Service Provider Penalties- The bill provides that a settlement service provider is subject to a civil penalty of \$25 for each instance in which the settlement service provider fails to: (1) notify the borrower of the borrower's right to receive the closing documents; or (2) make the closing documents available to the

borrower at least 48 hours before the closing. The bill provides that any penalty assessed shall be paid into the Property Tax Replacement Fund.

Effective Date: July 1, 2008.

Explanation of State Expenditures:

Explanation of State Revenues: (Revised) *Settlement Service Provider Penalties*- Under the bill, if a settlement service provider does not: (1) provide a notice to a borrower of the right to receive closing documents at least 48 hours before closing or (2) make those documents available within 48 hours of closing, the provider would be subject to a civil penalty of \$25 for each violation. The civil penalties would be placed into the Property Tax Replacement Fund (PTRF).

(Revised) *48-Hour Pre-closing Document Availability & Borrower's Rights*- For the provisions of the bill that fall under IC 24-9 (the state's Home Loan Practice Act), a violation of the Act constitutes a Class A misdemeanor. If violations of the new provisions of the bill were to result in additional court cases and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class A misdemeanor is \$5,000. However, any additional revenue would likely be small.

Current law provides for civil penalties for violation of an injunction against a violator of the Home Loan Practice Act. Civil penalties cannot exceed \$10,000 per injunction violation.

Explanation of Local Expenditures: *Posting Notice of Foreclosure Sale*- County sheriffs would be able to devote time currently used to post foreclosure notices for other law enforcement duties. Expenditures for printing of notices may be reduced if fewer notices are posted. Any savings would vary by county. Under current law, the sheriff has the power to charge a fee of \$10 to one owner plus \$3 to each additional owner to *serve* those owners with a written notice of the sale.

Publishing of Notices- Sheriffs would be required to publish foreclosure sale notices in *two* instead of *one* newspaper of general circulation. Those sheriffs would experience an increase in expenditures to place an advertisement in an additional newspaper.

(Revised) *Penalty Provision*: A Class A misdemeanor is punishable by up to one year in jail.

Explanation of Local Revenues: (Revised) *Penalty Provision*: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, any change in revenue would likely be small.

State Agencies Affected: Department of State Revenue.

Local Agencies Affected: Trial courts, local law enforcement agencies; county sheriffs.

Information Sources:

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